

EXHIBIT 6

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CORPORAL TRINIDAD NAVARRO,

Plaintiff,

v.

Civil Action No.
05-565 GMS

CHRISTOPHER A. COONS,
individually and in his official
capacity; GUY H. SAPP,
individually and in his official
capacity; and NEW CASTLE
COUNTY, a municipal corporation,

Defendants.

Deposition of GUY H. SAPP taken pursuant to
notice at the offices of Margolis Edelstein, 1509 Gilpin
Avenue, Wilmington, Delaware, beginning at 11:00 a.m. on
Wednesday, May 31, 2006, before Anne L. Adams, Registered
Professional Reporter and Notary Public.

APPEARANCES:

JEFFREY K. MARTIN, ESQ.
MARGOLIS EDELSTEIN
1509 Gilpin Avenue
Wilmington, Delaware 19806
for the Plaintiff,

JEFFREY S. GODDESS, ESQ.
ROSENTHAL, MONHAIT, GROSS & GODDESS
919 Market Street, Suite 1401
Wilmington, Delaware 19899-1070
for Defendants Coons and Sapp,

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

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1 APPEARANCES CONTINUED....

2 MICHELLE ALLEN, ESQ.
3 JUDITH A. HILDICK, ESQ.
NEW CASTLE COUNTY LAW DEPARTMENT
4 87 Reads Way
New Castle, Delaware 19720
5 for New Castle County.

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7 GUY H. SAPP,

8 the witness herein, having first been
9 duly sworn on oath, was examined and
10 testified as follows:

11 EXAMINATION

12 BY MR. MARTIN:

13 Q. Good morning, Mr. Sapp. I appreciate you coming
14 earlier. I expected that we would start the deposition
15 at 1:00 today, but you were kind enough to come earlier.
16 Hopefully, that will mean we will get done sooner.

17 Have you ever had your deposition taken
18 before today?

19 A. Once that I can recall.

20 Q. When would that have been?

21 A. It would have been 1993.

22 Q. Let me refresh you a little bit. I'm here to ask
23 questions. My intent is to ask one at a time. And if
24 you do not understand the question -- it's not going to

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1 be my purpose to give you any trick questions -- but if

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11 Navarro was upset about anything?

12 A. I got that understanding from the meeting on
13 wednesday when the CO asked Allison Levine to come into
14 the office and she indicated that the meeting didn't go
15 well. She was very upset about how the meeting went.

16 Q. At the time you were there at the Government
17 Center on that wednesday, what was your understanding, if
18 any, as to what Corporal Navarro's promotional status
19 was?

20 A. I had been trying to analyze all the information
21 since joining the county. And that day I issued a
22 memorandum to Colonel McAllister -- and I'm going to say
23 it was sometime after lunch. I have the date on the memo
24 but not the time -- indicating that we would move forward

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1 with one promotion but not the two that were over filled
2 in December. And I indicated we would not move forward
3 at that time.

4 Q. Let's just reference this. This was marked as
5 Exhibit 6 at the Navarro deposition. I would like you to
6 reference that if you can. Is this the letter or memo,
7 rather, that you were referring to?

8 A. It is.

9 Q. And it's dated June 9, which is consistent with
10 what you just testified to, correct?

11 A. June 29th.

12 Q. Sorry. June 29th. So you said that you were

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13 moving ahead with one rather than three sergeant
14 positions, correct?

15 A. That is correct.

16 Q. And what was your understanding, if any, as to
17 Corporal Navarro's status?

18 MR. GODDESS: At the time he wrote that
19 memo?

20 MR. MARTIN: Yes. Thank you.

21 THE WITNESS: By this time, I had seen a
22 list of officers who were eligible for promotion, I
23 think, down through the top 10 or 15. And I can't say I
24 paid a whole lot of attention to who the top five were.

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1 But subsequent to this memo and the promotion of Sergeant
2 Treadwell, I was aware of the fact that Corporal Navarro
3 was not in the first five on the list at that point.

4 BY MR. MARTIN:

5 Q. What did that mean to you?

6 A. That if he was not in the first five that he
7 could not be promoted. The county procedure is that you
8 have to be in the top five in order to be considered for
9 promotion and that the colonel has the ability to take
10 anyone within the top five.

11 Q. And if there are three positions that are to be
12 filled, you don't look at the top five, correct, you look
13 beyond the top five?

14 A. What we did was, each time there was a promotion,

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15 we asked the colonel and then the lieutenant colonel in
16 two subsequent promotions to focus on the top five and
17 make a decision. Having made that decision, if there was
18 another promotion to move the sixth person on the list
19 into that group of five and then rediscuss the promotion
20 so that each time you made a promotion you were only
21 looking at the top five.

22 Q. Are you saying that your review of the list told
23 you that Navarro was not eligible to be promoted?

24 A. Not prior to. I got an E-mail from human

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1 resources that gave me a list of 10 to 15 people -- I
2 can't remember how many -- who were eligible on that
3 sergeant's list. And I don't know that I ever sat there
4 and counted down to see how many would be considered, if
5 there was one, how many, if two, how many, and if three.
6 That was not my reason for requesting the list.

7 Q. Did you have an understanding that Colonel
8 McAllister wanted to promote Corporal Navarro to
9 sergeant?

10 A. No.

11 Q. Did you ever learn that?

12 A. Yes.

13 Q. When did you learn that?

14 A. In subsequent discussions. Probably after the
15 lawsuit was filed, it became clear that that was the
16 colonel's intent. When the colonel and I talked early in

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17 my tenure, he mentioned that he wanted to promote an
18 Hispanic, a female and an African-American. And to the
19 best of my memory, he never told me who they were.

20 Q. Did you look to figure out who was who?

21 A. I had that list. But, frankly, I couldn't tell
22 who was Hispanic and who was black. Because of the
23 people on the list at that point, I think the only one I
24 knew was Corporal Navarro. And the reason I knew him, he

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1 worked directly across the hall. I'd seen him on TV.

2 Q. What was your understanding as to his background?

3 A. That he was Hispanic.

4 Q. So on June 29 when you issued this memo to the
5 colonel, you were not aware that the colonel had wanted
6 to, intended to promote Colonel Navarro?

7 A. Corporal Navarro, no.

8 Q. As I understand, you said you didn't understand
9 that he wanted to promote him until sometime after the
10 lawsuit was filed?

11 A. Yes. And I don't know where I heard it from then
12 because I didn't have much contact with Colonel
13 McAllister after July the 24th.

14 Q. Is that when he was put on leave?

15 A. He agreed to go on paid administrative leave.

16 Q. July 24th?

17 A. That's correct.

18 Q. Now, going back to this memo of June 29, is it

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19 fair to say that the sergeant positions, although not
20 having been filled at that point, were in the budget or
21 had been approved?

22 A. The budget was approved sometime, I want to say,
23 in April because, late April, early May, because I was
24 not, I don't believe I was even working for the county

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1 yet and/or -- I didn't make the presentation. Colonel
2 McAllister did because I had nothing to do with the
3 formation of the budget. Somebody could probably give
4 you that date when the budget presentation was made for
5 public safety.

6 But my understanding, as time went on, was
7 that the number of positions in public safety is a factor
8 in determining whether or not sufficient monies are
9 placed into the personnel line, and that the numbers are
10 only critical leading up to the passage of the budget.
11 And once the budget passes -- and I guess this is county
12 wide because, again, I still have trouble understanding
13 this way of doing business -- but that once the budget
14 passes, the numbers become immaterial and it's the money
15 that you have. And it's based upon the money as to
16 whether or not you can over fill, over promote, whatever
17 you want to do.

18 As long as you have the money within the
19 department, you are permitted to make those kind of
20 adjustments at any point in the budget year, which is

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21 what I understand occurred in December. In the fiscal
22 year, '05, budget, there were 36 sergeants. And the
23 colonel decided to go to 38 and promoted two additional
24 sergeants in December of '04. The budget that passed for

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1 '06 included 38 sergeants.
2 And by the time June 29th arrived and I
3 issued this memorandum, I had heard from many, many
4 sources, both internal and external, that the most
5 critical need in the police department, at that point,
6 was for patrol officers. And this was given the fact
7 that we had 12 vacancies at that point in time. We were
8 not going to start in academy until, at the earliest,
9 November or December. And that eventually got pushed off
10 until March. And that we could ill afford to lose more
11 patrol officers.

12 Throughout my first two or three months, the
13 CAO and I discussed this. And my recommendation to him
14 was that, at least for the time-being, we not fill the
15 37th and 38th position. And we were in the process of
16 attempting to secure a contract to follow up on the
17 Southern Institute Study that had been conducted in 2000.
18 It was our intent, as part of that process, to have
19 whoever won the contract look at the authorized strength
20 of the department and the strength within each of the
21 ranks in the department. And that was the second reason
22 that I didn't feel it was appropriate to move forward

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23 with the two additional positions until we had that
24 report in hand.

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1 Q. And that report was eventually done by PERF; was
2 it not?

3 A. That's correct.

4 Q. And that was issued April of '06?

5 A. That's correct.

6 Q. But you did make more sergeants in December; did
7 you not, without having that report?

8 A. We filled up to the 36th sergeant. In other
9 words, we didn't increase the authorized strength beyond
10 36. We filled up to the 36th and left the 37th and 38th
11 vacant pending the PERF report.

12 Q. Isn't it fair to say that you had, before June
13 29, had promised that there would be three new sergeants
14 made at the time of the new fiscal year on July 1, 2005?

15 A. In a meeting held, called by the colonel, Colonel
16 McAllister, through the FOP, President Ellwein, and I
17 think involving the top 10 officers on that list, we sat
18 with them and discussed the fact that there was one
19 opening by virtue of the '05 budget and there were two
20 openings by virtue of the '06 budget for which he had
21 over promoted in December.

22 And Colonel McAllister made the statement
23 that he and I had been working on this issue and that it
24 was our intention to promote three sergeants after the

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1 1st of the fiscal year. And, at some point, it came
2 around to me. And I said that is my intention.
3 Q. And you communicated that intention?
4 A. I did.
5 Q. To the people who were --
6 A. In attendance.
7 Q. And they included those who stood to be promoted?
8 A. That's correct.
9 Q. So you made that statement to them that that was
10 your intention?
11 A. And that was in mid May. Exact date, I can't
12 remember now.
13 Q. And then it was on June 29 by way of memo that
14 you decided not to make those promotions?
15 A. After consulting with the CAO and receiving his
16 concurrence, I issued this memo saying that we would not.
17 I met with those same parties -- it wasn't everyone that
18 attended the first meeting, but I met with the same group
19 of officers in my office. I believe it was that
20 afternoon. I apologized for my statement in May. I told
21 them that I had learned more information since then, that
22 it had changed the backdrop against which I had
23 originally intended to make those promotions and that, at
24 this point, would not be move forward with the additional

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1 two promotions.

2 I was asked, at that point, if I would
3 guarantee that all the rest of the sergeants' promotions
4 would be filled. And I said, having learned a lesson in
5 this situation, I won't make guarantees. We'll fill them
6 as they come open or advise you that we will not be
7 filling them.

8 So while Corporal Navarro looked for a
9 commitment from me to move forward with promoting, any
10 openings that occurred afterwards, I could not make that
11 commitment. There were two subsequent promotions.

12 Q. Now, you said that this decision announced on
13 June 29th -- and by the way, was Corporal Navarro in
14 attendance when you made this apology?

15 A. He was.

16 Q. Now, this was your decision not to make these
17 other two sergeant promotions, correct?

18 A. I made that statement in the meeting. And I did
19 that because -- the colonel and I did not agree on this
20 decision. He advocated for the two sergeants and did not
21 agree with my position. I wanted to make it clear to
22 that group that this was coming from the director's
23 office and that no way had the colonel conceded or been
24 involved in a consensus process to reach this decision.

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1 And I made that statement because, in my
2 experience with the wilmington Police Department, in all
3 the training that I had as a sergeant and as a manager,
4 you always take responsibility for the bad news and you
5 always share the good news. And I didn't want to leave
6 any doubt in the officer's mind in that meeting that this
7 was something that the colonel had embraced.

8 Having said that, the chief administrative
9 officer was fully aware of the memo that was going to be
10 sent out. And I say that because when I met with him on
11 the 29th, before or after we had this discussion with
12 Allison Levine, I previewed the draft language I was
13 going to use in this memo. And he thought that it should
14 be shorter and more succinct. And I made those changes
15 before issuing that memo that afternoon.

16 Q. I'm sorry. What does this have to do with
17 Allison Levine? I missed that.

18 A. I'm just saying that it occurred the same day on
19 the 29th. So at some point as we are trying to work
20 through that, we discussed the memorandum that I was
21 going to issue on the sergeants' positions. He looked at
22 it, offered some amendments, and I incorporated those
23 amendments into the memo that was handed to Colonel
24 McAllister later that day.

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1 Q. As I understand it, I think you have so
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2 testified -- and correct me if I'm wrong -- when you met
3 with these officers who were to find out that they were
4 not going to be promoted, at least at that point, you
5 told them that it was your decision and your decision
6 only?

7 A. That's correct. The message I was trying to
8 impart was that this was coming from me and not the
9 colonel. I didn't want the colonel to, in any way, be
10 blamed for this. He fought hard and vigorously to
11 preserve these two positions. And it was only after what
12 I learned between joining the county April the 18th and
13 my recommendation to the CAO on June the 29th that we not
14 proceed with those two promotions, that we made the final
15 decision. I didn't want any of the officers thinking
16 that it was their chief undercutting them.

17 Q. As I think I understand, you met with the CAO
18 before you issued this memo. You said he helped edit the
19 memo for you?

20 A. That's correct.

21 Q. And so that decision was made on June 29th; it
22 was not made before that?

23 A. That's correct.

24 Q. Is there any reason why Allison Levine knew about

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1 that decision on the morning of the 29th?

2 A. No. She couldn't have known about the final
3 decision because it wasn't reached until after her
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4 meeting. At least that's my understanding and my
5 recollection of how that day progressed. Because I was
6 in my office in the morning. The colonel came in before
7 lunch, was upset. At some point, I took the information
8 he relayed, went to the Government Center, met with the
9 CAO. We had the discussion with Allison Levine Taylor.
10 And at some point, I went back with this edited version
11 of the memo and handed that to Colonel McAllister.

12 So I can't think of how she would have known
13 about a final decision that wasn't reach until sometime
14 after we met with her. That's my recollection. And I
15 would not have told her.

16 Q. Do you know whether Mr. Singleton told her?

17 A. No, I don't.

18 Q. And as I understand the process, it was begun by
19 Colonel McAllister talking with you being upset about, or
20 asking whether you were going to promote these other two?

21 A. Our discussions about promotions began probably
22 in the second or third week that I was in the job.
23 Because there had been an opening since March. And that
24 would have been for the 36th sergeant who retired.

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1 One of the other factors that I was
2 struggling with at that point was, probably the third or
3 fourth week in, I'm told we have a \$500,000 deficit in
4 the department of public safety. And I told the colonel
5 that I was having some real problems with promoting the